

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 695 Tax Collections, Sales, and Liens
SPONSOR(S): Economic Development & Community Affairs Policy Council; Schultz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2190

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Military & Local Affairs Policy Committee</u>	<u>14 Y, 0 N</u>	<u>Fudge</u>	<u>Hoagland</u>
2)	<u>Economic Development & Community Affairs Policy Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Fudge</u>	<u>Tinker</u>
3)	<u>Full Appropriations Council on General Government & Health Care</u>	<u></u>	<u></u>	<u></u>
4)	<u>Finance & Tax Council</u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Chapter 197, F.S., governs tax collections, sales, and liens.

The bill revises ch. 197, F.S., by removing archaic language, removing reference to outdated laws, combining certain sections for consistency, and clarifying definitions. The bill provides specific guidelines for the approval of a homestead tax deferral.

The bill also authorizes the tax collector to establish branch offices to conduct state business or, if authorized to do so by resolution of the county governing body pursuant to s. 1(k), Art. VIII of the State Constitution, conduct county business.

The amount of the opening bid in a tax deed sale of homestead property is increased from the assessed value to the just value. This change removes the limitation of Save Our Homes thereby increasing the amount of the initial bid. Tax certificates not incorporated into a tax deed certificate would survive the issuance of a tax deed. Municipal and county government liens survive as to principal only and only if recorded in the public records of the county prior to the tax deed sale.

The bill provides legislative intent that property tax collection should be free from the influence or the appearance of influence of the local governments who levy property taxes and receive property tax revenues.

The bill is effective July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 197, F.S., governs tax collections, sales, and liens.

Effect of Proposed Changes

The bill revises ch. 197, F.S., by removing archaic language, removing reference to outdated laws, combining certain sections for consistency, and clarifying definitions. Some of the noteworthy changes in the bill are:

Mistake of Fact

Current Law

If a material mistake of fact relating to an essential condition of a property is discovered, it is within the property appraiser's discretion whether that mistake corrected.¹

Proposed Changes

The bill requires the property appraiser to correct the material mistake of fact.

Uncollectible Personal Property Taxes

Current Law

Current law does not provide procedures when delinquent personal property tax accounts are determined to be uncollectible.

Effect of Proposed Changes

The bill requires that the tax collector notify the property appraiser that an account is invalid when the account is determined to be uncollectible.

¹ § 197.122(3), F.S.

Corrections resulting in refunds

Current Law

When a correction results in a refund of more than \$400, the tax collector must submit a claim for refund with the department.

Effect of Proposed Changes

The bill increases the threshold amount to \$2500 before the tax collector must seek approval from the department.

Property Tax Deferrals

Current Law

Property tax deferrals for homestead², recreational and commercial working waterfront³ and affordable rental housing⁴ properties are contained within separate sections of ch. 197, F.S.

Effect of Proposed Changes

Section 197.2421, F.S., is created and combines the tax deferral provisions for homestead, recreational and commercial working waterfront and affordable rental housing properties. Section 197.2423, F.S., is also created to prescribe the process for determining the approval or denial of a property tax deferral by the tax collector. Section 14 of the bill also provides specific guidelines for the approval of a homestead tax deferral.

Appeal of Denied Tax Deferral

Current Law

Section 197.253, F.S., prescribes the procedure for applying for a homestead tax deferral. The application must be on a form prescribed by the department. The tax collector must consider the application for homestead tax deferral within 30 days of the application. A denial of the tax deferral can be appealed to the value adjustment board. The decision of the value adjustment board may be appealed to the circuit court by a petition for a declaratory judgment or other appropriate proceeding.

Effect of Proposed Changes

The application procedure is moved to s. 197.2421, F.S. The bill provides new time requirements for the process. If the tax collector disapproves a tax deferral he must send notice of the disapproval within 45 days after the application is filed. Section 197.253, F.S., is renumbered to s. 197.2425, F.S., and prescribes the appeal process. The time for appeal is increased from 20 days to 30 days from the applicant's receipt of the disapproval. An appeal of the value adjustment board decision is by a de novo proceeding for a declaratory judgment or other appropriate proceeding in circuit court.

Deferred Payment Tax Certificates

Current Law

Section 197.262, F.S., requires tax collectors to notify each local governing body of the amount of taxes and non ad-valorem assessments deferred which would otherwise have been collected by the governing body. The interest rate on tax certificates held by counties shall not exceed 9.5 percent.

Effect of Proposed Changes

The required notice to local governing bodies is removed and the maximum interest rate on certificates may not exceed 7 percent.

² § 197.252, F.S.

³ § 197.304, F.S.

⁴ § 197.307, F.S.

Notice to Taxpayers of Tax Bill

Current Law

The tax collector is required to send by mail to each taxpayer a tax notice stating the amount of current taxes due.

Effect of Proposed Changes

The bill authorizes the tax collector to send such notices electronically or by mail. Electronic transmission may only be used with the express consent of the property owner. However, if a notice sent electronically is returned as undeliverable, a second notice may be sent by mail but the original electronic notice is the official mailing. The bill also provides that other notices may be by electronic means and deletes requirements that certain information be provided or stored in the form prescribed by the Department of Revenue.

Branch Offices

Current Law

Article VIII, section 1(k), of the Florida Constitution, requires a resolution of the governing body of the county to establish a branch office for the conduct of county business outside of the county seat.

Effect of Proposed Changes

The bill authorizes the tax collector to establish branch offices to conduct state business or, if authorized to do so by resolution of the county governing body pursuant to s. 1(k), Art. VIII of the State Constitution, conduct county business.

The bill also authorizes the tax collector to perform collection duties through the use of contracted services or products or by electronic means.

Installment Payment Program

Current Law

The tax collector may implement an installment payment program for the payment of delinquent personal property taxes. If implemented, the program must be available to each delinquent personal property taxpayer whose delinquent personal property taxes exceed \$1,000.

Effect of Proposed Changes

The bill deletes the mandatory availability of the program to taxpayers whose delinquent personal property taxes exceed \$1,000 and makes the program available to all delinquent personal property taxpayers.

Tax Certificates on Homestead Property

Current Law

A tax certificate of less than \$100 in delinquent taxes on homestead property cannot be sold at public auction, but must be issued to the county and bear a maximum interest of 18%.⁵

Effect of Proposed Changes

The certificate amount is increased to \$250 and the maximum interest rate is reduced to maximum rate allowed under s. 197.252(4), F.S., which is currently 7%. The bill authorizes the use of proxy bidding for tax certificate sales and the use of a random number generator to determine a winner. This would generally be used for electronic bidding, so that a winning bidder's bid amount would be increased to the next lowest bid amount.

Opening Bid on Homestead Property

⁵ § 197.172, F.S.

Current Law

An opening bid on homestead property must include an amount equal to one-half of the latest assessed value of the homestead. The “assessed value” of homestead property is the fair market value, or “just value,” as limited by Save Our Homes.⁶

Effect of Proposed Changes

The opening bid must now be based on one-half of the just value of the homestead. This increases the opening bid because the just value does not include the Save Our Homes limitation.

Tax Certificates

Current Law

Once a tax deed is issued no right, interest, restriction, or covenant survives except for liens held by municipal or county governmental unit, special district, or community development district.

Effect of Proposed Changes

The bill provides that tax certificates not incorporated into the tax deed certificate would also survive the issuance of a tax deed. However, these liens cannot provide a basis for foreclosure against the interest of the tax deed owner unless the owner is reimbursed for the price of acquiring the tax deed. If a foreclosure results in a deficiency, the proceeds of the foreclosure are distributed pro rata. Municipal and county government liens survive as to principal only and only if recorded in the public records of the county prior to the tax deed sale.

Legislative Intent

The bill provides legislative intent that property tax collection should be free from the influence or the appearance of influence of the local governments who levy property taxes and receive property tax revenues.

Repealed Acts

- Section 197.202, F.S., dealing with destruction of 20-year-old tax receipts is repealed as obsolete.
- Section 197.242, F.S., providing short title “Homestead Property Tax Deferral Act” is repealed.
- Section 197.3042, F.S., dealing with notices to local governments regarding tax deferrals for recreational and commercial working waterfronts and s. 197.3072, F.S., dealing with notices to local governments regarding tax deferral for affordable rental housing properties are repealed.
- Section 197.307, F.S., dealing with procedures for adopting ordinance for tax deferrals for affordable rental housing is moved to s. 197.2524, F.S.
- Sections 197.304 and 197.3041, F.S. dealing with applying for tax deferral for recreational and commercial working waterfronts; and ss. 197.3072 and 197.3073, F.S., applying for tax deferral for affordable rental housing property are now contained within s. 197.2423, F.S.
- Sections 197.3043 and 197.3075, F.S., governing change in use or ownership of property is now covered by 197.263, F.S.
- Sections 197.3044 and 197.3076, F.S., governing prepayment of deferred taxes and non-ad valorem assessments is now governed by 197.272, F.S.
- Sections 197.3045 and 197.3077, F.S., governing distribution of payments is now governed by 197.282, F.S.
- Sections 197.3046 and 197.3088, F.S., providing for construction of the section dealing with the collection of personal property taxes is provided for in 197.292, F.S.
- Sections 197.3047 and 197.3079, F.S., providing for penalties is provided for in s. 197.301, F.S.

⁶ § 192.001(2), F.S.

- Section 197.433, F.S., relating to duplicate tax certificates if the original is lost or destroyed is repealed.

B. SECTION DIRECTORY:

Section 1: Amends s. 197.102, F.S., providing definitions.

Section 2: Amends s. 197.122, F.S., regarding liens.

Section 3: Amends s. 197.123, F.S., requiring disclosure.

Section 4: Creates s. 197.146, F.S., providing procedure for uncollectable personal property taxes.

Section 5: Amends s. 197.162, F.S., revising language.

Section 6: Amends s. 197.172, F.S., removes reference to s. 197.172, F.S.

Section 7: Amends s. 197.182, F.S., renumbers section, makes grammatical changes, and increases the minimum amount of a refund for overpayment to \$10.

Section 8: Amends s. 197.222, F.S., removes reference to Department of Revenue forms.

Section 9: Amends s. 197.2301, F.S., increases minimum amount of bill or refund for underpayment or overpayment to \$10.

Section 10: Creates s. 197.2421, F.S., combines all tax deferral statutes.

Section 11: Creates s. 197.2423, F.S., providing procedure for approval or denial of tax deferral.

Section 12: Renumbers s. 197.253, F.S., as s. 197.2425, F.S., and provides procedure for appeal of denial of tax deferral.

Section 13: Amends s. 197.243, F.S., removing "Act" from title.

Section 14: Amends s. 197.252, governing procedures for tax deferrals.

Section 15: Renumbers s. 197.303 as s. 197.2524, F.S., dealing with tax deferrals for recreational and commercial working waterfront properties and includes provisions for tax deferral of affordable rental housing property.

Section 16: Renumbers s. 197.3071, F.S., as s. 197.2526, F.S., and provides for tax deferral eligibility of affordable rental housing property.

Section 17: Amends s. 197.254, F.S., removing back of envelope notice requirements.

Section 18: Amends s. 197.262, F.S., removes requirement that tax collector notify local governing body of taxes that are deferred and reduces amount of interest on tax certificates from 9.5 to 7 percent.

Section 19: Amends s. 197.263, F.S., clarifying sections.

Section 20: Amends s. 197.272, F.S., removing section allowing prepayment by certain individuals.

Section 21: Amends s. 197.282, F.S., making minor rewording changes.

Section 22: Amends s. 197.292, F.S., making minor rewording and numbering changes.

Section 23: Amends s. 197.301, F.S., to include deferred taxes and non-ad valorem assessments subject to penalties.

- Section 24: Amends s. 197.312, F.S., making minor rewording changes.
- Section 25: Amends s. 197.322, F.S., authorizing tax collector to send notice of taxes electronically or by mail.
- Section 26: Amends s. 197.332, F.S., authorizing tax collector to establish branch offices.
- Section 27: Amends s. 197.343, F.S., authorizing tax collector to send additional notice of taxes electronically or by mail. Removing duplicate notices to condominium and homeowner associations.
- Section 28: Amends s. 197.344, F.S., making minor rewording changes and authorizing notice to be sent electronically or by mail.
- Section 29: Amends s. 197.3635, F.S., removes requirement for partition between ad valorem taxes and non ad-valorem assessments.
- Section 30: Amends s. 197.373, F.S., changes the 15 day notice requirement to 45 days.
- Section 31: Amends s. 197.402, F.S., provides additional day if deadline falls on weekend or legal holiday.
- Section 32: Amends s. 197.403, F.S., makes minor rewording changes and removes form provided by Department of Revenue.
- Section 33: Amends s. 197.413, F.S., increases fee to delinquent taxpayer for notices.
- Section 34: Amends s. 197.414, F.S., removes requirement that record be kept in a form prescribed by the Department of Revenue.
- Section 35: Amends s. 197.4155, F.S., requires that delinquent personal property tax program be available to all taxpayers if a payment program is implemented.
- Section 36: Amends s. 197.416, F.S., removes requirement that tax collector maintain action to collect delinquent taxes for seven years.
- Section 37: Amends s. 197.417, F.S., authorizing notice to be posted on the Internet.
- Section 38: Amends s. 197.432, F.S., increases minimum amount of tax certificate from \$100 to \$250 and authorizes use of proxy bidding and random number generators.
- Section 39: Amends s. 197.4325, F.S., making minor rewording changes.
- Section 40: Amends s. 197.442, F.S., making minor rewording changes.
- Section 41: Amends s. 197.443, F.S., authorizes tax collector to make tax certificate corrections or cancellations without order from the Department of Revenue.
- Section 42: Amends s. 197.462, F.S.
- Section 43: Amends s. 197.472, F.S., requires certificate redeemer to pay all interest, costs, and charges.
- Section 44: Creates s. 197.4725, F.S., provides for the purchase of county-held tax certificates.
- Section 45: Amends. s. 197.473, F.S., revises procedure for unclaimed redemption money.

- Section 46: Amends s. 197.482, F.S., removes reference to Act of 1973 Legislature.
- Section 47: Amends s. 197.492, F.S., allowing electronic submission of report.
- Section 48: Amends s. 197.502, F.S., adds a \$75 fee for electronic tax deed application.
- Section 49: Amends s. 197.542, F.S., revises requirements for sale at public auction.
- Section 50: Amends s. 197.552, F.S., to include state and federal liens survive tax deeds.
- Section 51: Amends s. 197.582, F.S., requires tax collector to distribute funds to pay taxes.
- Section 52: Amends s. 192.0105, F.S., to correct cross-reference and change “mailed” to “sent”.
- Section 53: Amends s. 194.011, F.S., to correct cross-reference.
- Section 54: Amends s. 194.013, F.S., to correct cross-reference.
- Section 55: Amends s. 194.011, F.S., to correct cross-reference.
- Section 56: Creates s. 197.603, F.S., to provide legislative intent.
- Section 57: Repeals various sections of ch. 197, F.S.
- Section 58: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Tax collectors will be able to charge a fee to cover the costs of electronic tax deeds.

2. Expenditures:

The bill may reduce expenditures by tax collectors by allowing tax collectors to send certain notices electronically instead of by mail.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers may receive their tax notices sooner and may also receive refunds under \$2,500 without having to wait for approval by the Department of Revenue. In addition, if a homestead property owner loses their home at a tax deed sale they will receive a higher price because the opening bid will be based on just value instead of the assessed value which was limited by Save Our Homes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue may repeal some rules implementing certain forms no longer required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 197.3042, 197.3072, and 197.262, F.S., which require notices to each local governing body of deferred taxes, is deleted. The tax collectors represent that this information is already provided to the governing bodies in the Tax Roll Recapitulation Form required by the Department of Revenue. However, the form only appears to disclose exemptions, not deferrals.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 14, 2009, the Economic Development & Community Affairs Policy Council adopted a strike all amendment. The amendment revises requirements related to electronic notification of taxes by requiring the express consent of the taxpayer, provides a definition for "awarded", and provides a declaration of legislative findings and intent. The amendment also removes a provision of the original bill which required the value adjustment board to approve or disapprove appeals on tax deferrals within 30 days after receiving the appeal. Any tax certificate available for sale on land for which a county tax deed application is pending must be struck to the county. The bill revises tax deed application requirements, and provides requirements for full payment of all outstanding amounts when a tax certificateholder applies for a tax deed. The amendment clarifies that if the tax collector implements a delinquent personal property tax payment program it must be available to all taxpayers.

This analysis reflects the council substitute adopted by the Economic Development & Community Affairs Policy Council.